THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on : 09.07.2007

\+ **WP(C) 5355/2005**

KALINDEE RAIL NIRMAN (ENGINEERS) LTD ... Petitioner

versus -

CHIEF SIGNAL & TELECOM. ENGINEER WORKS & ANOTHER (NORTHERN RAILWAY) ... Respondent

Advocates who appeared in this case:
For the Petitioner : Mr Himanshu Shekhar with Mr Awanish Sinha
For the Respondent : None.

CORAM:-
HON'BLE MR JUSTICE BADAR DURREZ AHMED

1. Whether Reporters of local papers may be allowed to see the judgment?

2. To be referred to the Reporter or not?

3. Whether the judgment should be reported in Digest?

BADAR DURREZ AHMED, J (ORAL)

1. Nobody appears for the respondent even today despite opportunities being granted. Accordingly, the learned counsel for the petitioner was heard.

2. The writ petition as initially filed carries, *inter alia*, the following prayers:-

> "A. Issue appropriate Writ, order or direction for quashing and declaring the purported action of the respondents in realising an amount of Rs. 15,75,466/- from the petitioner from any other payment, to be ultravires and without any authority of law.
>
> B. Issue appropriate Writ, order or direction quashing and declaring the illegal realisation of an amount of

Rs. 50,000/- and for refund of Rs. 50,000/- illegally realised by the respondents from the Tender No.NR/S & T/C – 94."

The learned counsel appearing for the petitioner submits that prayer 'A' stands satisfied during the pendency of the writ petition and, therefore, need not be gone into. Prayer 'B' relates to the refund of the amount of Rs 50,000/-, which, according to the petitioner, was illegally retained by the respondents.

3. The background of the case is that on 27.04.2003, the Chief Signal and Telecommunication Engineer (Works), Northern Railway, Baroda House, New Delhi invited tenders for Indoor Signalling works on the Delhi – Bhatinda Section of Delhi Division. The cost of work was approximately Rs 2.36 crores and the earnest money / security deposit was Rs 50,000/-. The petitioner, alongwith others, submitted its offer. The petitioner's offer was accepted conditionally. The petitioner did not accept those conditions and, therefore, the formal contract could not materialise. The sum of Rs 50,000/- deposited by the petitioner was forfeited. The petitioner has no grievance with regard to this forfeiture. However, alongwith the forfeiture of Rs 50,000/-, a sum of Rs 15,75,466/- had also been retained by the respondents in respect of the petitioner's other contracts which amount has subsequently been released and with that also the petitioner has no grievance remaining. Thereafter, a fresh notice inviting tenders was floated on 15.07.2004 for the same work. This time also, the petitioner submitted a security deposit / earnest money of Rs 50,000/-. However, on this occasion, the petitioner's offer was not accepted, but despite

repeated requests, the amount of Rs 50,000/- was not refunded on the ground that the same was to be retained against dues in respect of the risk tender pertaining to the earlier NIT of 24.07.2003.

4. The short point that arises for consideration in this case is: whether the respondents can retain the sum of Rs 50,000/- which was submitted for the second tender and which was not awarded to the petitioner ? The learned counsel for the petitioner submits that this cannot be done for the simple reason that the security deposit / earnest money was in respect of the second tender and had nothing to do whatsoever with the first tender under which the security deposit of Rs 50,000/- stood forfeited. His contention was that in respect of one tender, there cannot be two forfeitures of security deposit. I find myself to be in agreement with this submission.

5. Accordingly, I direct that the sum of Rs 50,000/- be returned to the petitioner alongwith interest @ 6% per annum. Before concluding it is essential to note that earlier, in an order dated 28.03.2007, it had been recorded that the question was whether arbitration should be conducted by an arbitrator nominated by the respondents under Section 64 of the general conditions of the contract or by an arbitrator to be nominated by this court. This was done on the submission made by the learned counsel for the respondent appearing on that date that the matter was covered by the decision of the Supreme Court in the case of ***Union of India v. M.P. Gupta*: 2004 (10) SCC 504**. Today, I have examined the said decision and it is clear that it relates to a concluded contract.

In the present case, there is no written contract between the petitioner and the respondents. As such, that decision would have no applicability. The issue, therefore, with regard to reference to arbitration does not arise at all.

This writ petition is allowed to the extent indicated above. No costs.

BADAR DURREZ AHMED
(JUDGE)

July 09, 2007
Dutt/M